

Kerala Gazette No. 30 dated , 22nd July, 2008

PART I

Section i



GOVERNMENT OF KERALA

Law (Legislation Publication) Department

NOTIFICATION

No. 3495/Leg. Pbn. 3/08/Law. *Dated, Thiruvananthapuram, 20th February 2008.*

The following Ordinance promulgated by the President of India and published in a Gazette of India, Extraordinary, Part II, Section I, dated the 31st January, 2008 is hereby republished for general information.

By order of the Governor,

P. S. GOPINATHAN,
Law Secretary.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 31st January, 2008/Magha 11, 1929 (Saka)

**THE FORWARD CONTRACTS (REGULATION) AMENDMENT
ORDINANCE, 2008**

[No. 3 OF 2008]

Promulgated by the President in the Fifty-ninth Year of the Republic of India.

AN

ORDINANCE

further to amend the Forward Contracts (Regulations) Act, 1952 and the Securities and Exchange Board of India Act, 1992.

WHEREAS a Bill further to amend the Forward Contracts (Regulations) Act, 1952 and the Securities and Exchange Board of India Act, 1992 has been introduced in Parliament but has not yet been passed ;

AND WHEREAS Parliament is not in session and the President is satisfied that the circumstances exist which render it necessary for her to take immediate action to give effect to the provisions of the Bill ;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance :—

CHAPTER I

PRELIMINARY

1. *Short title and commencement.*—(1) This Ordinance may be called the Forward Contracts (Regulation) Amendment Ordinance, 2008.

(2) It shall come into force at once.

CHAPTER II

AMENDMENTS TO THE FORWARD CONTRACTS (REGULATION)
ACT, 1952

2. *Amendment of long title.*—In the Forward Contracts (Regulation) Act, 1952 (74 of 1952) (hereafter in this Chapter referred to as the principal Act), in the long title, for the words “the prohibition of options in goods”, the words “and to promote the development of, and to regulate, the commodity derivatives market” shall be substituted.

3. *Amendment of section 2.*—In section 2 of the principal Act,—

(i) for clause (a), the following clauses shall be substituted, namely :—

(a) “Appellate Tribunal” means the Securities Appellate Tribunal established under sub-section (1) of section 15K of the Securities and Exchange Board of India Act, 1992 (15 of 1992) ;

(aa) “association” means any body of individuals, whether incorporated or not, constituted for the purposes of regulating and controlling the business of the sale of purchase of any goods and commodity derivative ;

(ab) “Chairman” means the Chairman of the Commission referred to in clause (a) of sub-section (1) of section 3A; ;

(ii) after clause (b), the following clauses shall be inserted, namely:—

“(ba) “commodity derivative” means—

(i) a contract for delivery of goods, which is not a ready delivery contract ; or

(ii) a contract for differences which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified in consultation with the Commission by the Central Government, but does not include securities ;

(bb) “corporatisation” means the succession of a recognized association, being a body of individuals or a society registered under the Societies Registration Act, 1860 (21 of 1860), by another association, being a company incorporated for the purpose of assisting, regulating or

controlling the business of buying, selling or dealing in goods or commodity derivatives carried on by such individuals or society;

(bc) “demutualization” means the segregation of ownership and management from the trading rights of the members of a recognized association in accordance with a scheme approved by the Commission;’;

(iii) in clause (c), after the words “delivery contract”, the words “and includes contract for commodity derivative” shall be inserted;

(iv) after clause (c), the following clause shall be inserted, namely :—

‘(ca) “Fund” means the Forward Markets Commission General Fund constituted under sub-section (1) of section 4E;’;

(v) after clause (e), the following clauses shall be inserted, namely :—

‘(ea) “intermediary” means a member of the association, and includes a collateral manager, a clearing house, or such other person who is associated with the commodity derivatives market and is specified as such by the Central Government for the purposes of this Act ;

(eb) “member” means a whole-time or part time member of the Commission and includes the Chairman;’;

(vi) after clause (f), the following clauses shall be inserted, namely :—

‘(fa) “notification” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly;

(fb) “option in commodity derivative” means an agreement, by whatever name called, for trading in a commodity derivative and includes a teji, mandi, a teji-mandi, a gali, a put, a call or a put and call in commodity derivative;’;

(vii) in clause (i),—

(A) for the words “eleven days”, the words “thirty days” shall be substituted ;

(B) in the Explanation, in clause (i), after the word and figures “Act, 1970”, the words, figures and bracket “or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980) shall be inserted ;

(viii) in clause (j), for the words and figure “the Central Government under section 6 in respect of goods or classes of goods”, the words and figure “the Commission under section 6 in respect of forward contract or classes of forward contracts” shall be substituted;

(ix) for clause (jj), the following clause shall be substituted, namely:—

‘(jj) “regulations” means the regulations made by the Commission under this Act;’;

(x) after clause (k), the following clause shall be inserted, namely:—

‘(ka) “Scheme” means a scheme for corporatisation or demutualisation of a recognized association which may provide for—

(A) the issue of shares for a lawful consideration and provision for trading rights in lieu of membership cards of members of a recognized association;

(B) the restrictions on voting rights;

(C) the transfer of property, business, assets, rights, liabilities, recognitions, contracts of the recognized association, legal proceedings by, or against, the recognized association, whether in the name of the recognized association or any trustee or otherwise and any permission given to, or by, the recognized association;

(D) the transfer of employees of a recognized association to another recognized association;

(E) any other matter required for a the purpose of, or in connection with, the corporatisation or demutualisation, as the case may be, of the recognized association;’;

(xi) in clause (m), for the words “forward contract which provides for”, the words “forward contract which provides for, and is performed by,” shall be substituted.

4. *Amendment of Section 3.*—In section 3 of the principal Act, for sub-sections (2), (3), (4) and (5), the following sub-section shall be substituted, namely:—

“(2) The Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.”.

5. *Insertion of new sections 3A, 3B, 3C, 3E, 3F, 3G and 3H.*— After section 3 of the principal Act, the following sections shall be inserted, namely:—

“3A. *Management of Commission.*—(1) The Commission shall consist of the following members, namely:—

- (a) a Chairman;
- (b) two members from amongst the officials of the Ministries or Departments of the Central Government dealing with Consumer Affairs, Commodity Derivatives, Food and Public Distribution, Agriculture of Finance;
- (c) one member from amongst the officials of the Reserve Bank;
- (d) five other members of whom at least three shall be the whole-time members.

(2) The general superintendence, direction and management of the affairs of the Commission shall vest in a board of members which may exercise all powers and do all acts and things which may be exercised or done by the Commission.

(3) Save as otherwise determined, by regulations the Chairman shall have powers of general superintendence and direction of the affairs of the Commission and may also exercise all powers and do all acts and things which may be exercised or done by the Commission.

(4) The Chairman and members referred to in clauses (a) and (d) of sub-section (1) shall be appointed by the Central Government and the members referred to in clauses (b) and (c) of that sub-section shall be nominated by the Central Government and the Reserve Bank, respectively.

(5) The Chairman and other members referred to in clauses (a) and (d) of sub-section (1) shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to commodity markets or who have special knowledge or experience of commerce of economics or law or finance or in administration or have practical experience in any matter which renders them suitable for appointment on the Commission:

Provided that every person appointed as Chairman and every other person appointed as member of the Commission and holding office as such immediately before the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, shall notwithstanding any order for their appointment made

under sub-section (2) of section 3 as it stood before the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, shall hold office till the Chairman or other member has been appointed in accordance with this section after such commencement and no person shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.

3B. Term of office and conditions of service of Chairman and members of Commission.—(1) The term of office and other conditions of service of the Chairman and the members referred to in clause (d) of sub-section (1) of section 3A shall be such as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), the Central Government shall have the right to terminate the services of the Chairman or a member appointed under clause (d) of sub-section (1) of section 3A, at any time before the expiry of the period prescribed under sub-section (1), by giving him notice of not less than three months in writing or three months' salary and allowances in lieu thereof, and the Chairman or a member, as the case may be, shall also have the right to relinquish his office, at any time before the expiry of the period prescribed under sub-section (1), by giving to the Central Government notice of not less than three months in writing.

3C. Removal of member from office.— The Central Government shall remove a member from office if he—

- (a) is, or at any time has been, adjudicated as insolvent;
- (b) is of unsound mind and stands so declared by a competent court;
- (c) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude;
- (d) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest:

Provided that no member shall be removed under this clause unless he has been given a reasonable opportunity of being heard in the matter.

3D. Meetings of Commission.—(1) The Commission shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings including quorum at such meetings as may be provided by regulations.

(2) The Chairman or, if for any reason he is unable to attend the meeting of the Commission, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Commission shall be decided by a majority of votes of the members of the Commission present and voting, and in the event of an equality of votes, the Chairman or in his absence the member presiding, shall have a second or casting vote.

3E. *Vacancies, etc. not to invalidate proceedings of Commissions.*—No act or proceeding of the Commission shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Commission; or

(b) any defect in the appointment of a person acting as member of the Commission; or

(c) any irregularity in the procedure of the Commission not affecting the merits of the case.

3F. *Member not to participate in meetings in certain cases.*—Any member, who is a director of a company and who as such director has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Commission, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Commission, and the member shall not take any part in any deliberation or decision of the Commission with respect to that matter.

3G. *Bar on future employment of members.*—The Chairman and the whole-time members shall not, for a period of two years from the date on which they cease to hold office as such, except with the previous approval of the Central Government, accept any employment with any person dealing with the commodities derivatives or with any intermediary.

3H. *Officers and employees of Commission.*—(1) The Commission may appoint such officers and other employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The terms and conditions of service of the officers and employees of the Commission appointed under sub-section (1) shall be such as may be determined by regulations:

Provided that every officer and other employee holding any office under the Commission, before the commencement of the forward Contracts (Regulation) Amendment Ordinance, 2008, shall continue to hold his office as such after such commencement for the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement and other terminal benefits as he would have held such office if the said Ordinance had not come into force and shall continue to do so as an officer or other employee of the Commission until the regulations are made under this sub-section or the expiry of one year from the date of such commencement or till the date on which such officer or other employee opts not to be the officer or other employee of the Commission, whichever is earlier.”.

6. *Amendment of section 4.*—In section 4 of the principal Act,—

(a) for clause (a) the following clauses shall be substituted, namely:—

“(a) to advise the Central Government in respect of matters arising out of the administration of this Act ;

(aa) to grant or withdraw recognition of any association;”;

(b) in clause (e), for the words “registered association or any member of such association”, the words “any member of such association or any intermediary” shall be substituted;

(c) for clause (f), the following clauses shall be substituted, namely:—

“(f) to regulate the business of the associations;

(g) to regulate the functioning of members of the associations, clearing houses, warehouses and intermediaries;

(h) to levy fees for carrying out the purposes of this Act;

(i) to conduct research for the purpose of development and regulation of commodity derivatives markets;

(j) to call from or furnishing to any such agencies, as may be specified by the Commission, such information as may be considered necessary by it for the efficient discharge of its functions;

(k) to protect the interests of the market participants in commodity derivatives markets;

(l) to promote and regulate self-regulatory organizations;

G. 145/2008/DTP.

(m) to prohibit fraudulent and unfair trade practices relating to commodity derivative;

(n) to promote investors' education and training of intermediaries;

(o) to prohibit insider trading in commodity derivative;

(p) to advise the Central Government as to the goods in respect of which forward contract or option in goods or option in commodity derivative may be notified;

(q) to perform such other duties and exercise such other powers as may be assigned to the Commission by or under this Act, or as may be prescribed.”.

7. *Amendment of section 4A.*—In section 4A of the principal Act, in subsection (3),—

(a) for the words and figures “the Code of Criminal Procedure, 1898” (5 of 1898), the words and figures “the Code of Criminal Procedure, 1973” (2 of 1974) shall be substituted;

(b) for the word and figures “section 482”, the word and figures “section 346” shall be substituted.

8. *Insertion of new sections 4B and 4C.*—After section 4A of the principal Act, the following sections shall be inserted, namely:—

“4B. *Power to issue directions by Commission.*—Save as otherwise provided in section 4, if after making or causing to be made an inquiry, the Commission is satisfied that it is necessary, in the interest of trade and orderly development of commodity derivatives market, it may issue directions to any intermediary or association.

4C. *Cease and desist proceedings.*—If the Commission finds, after causing an inquiry to be made, that any person has violated, or is likely to violate any provisions of this Act or any rules or regulations made thereunder, the Commission may pass an order requiring such person to cease and desist from committing or causing such violations.”.

9. *Insertion of new Chapter IIA.*—After Chapter II of the principal Act, the following Chapter shall be inserted, namely:—

CHAPTER IIA

FINANCE, ACCOUNTS AND AUDIT

4D. *Grants by Central Government.*—The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Commission grants of such sums of money as that Government may think fit for being utilized for the purposes of this Act.

4E. *Fund.*—(1) There shall be constituted a Fund to be called the Forward Markets Commission General Fund and there shall be credited thereto—

(i) all grants and fees received by the Commission under this Act;

(ii) all sums received by the Commission from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting—

(i) the salaries, allowances and other remuneration of the members, officers and other employees of the Commission;

(ii) the expenses of the Commission in the discharge of its functions under section 4;

(iii) the expenses on objects and for purposes authorized by this Act:

Provided that the sums authorized to be paid and applied from and out of the Consolidated Fund of India and appropriated by law made by Parliament for the services and purposes of the Commission shall continue to be paid and applied for such services and purposes of the Commission till the fund is constituted under this section.

4F. *Accounts and Audit.*—(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form and manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Commission shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General Generally has in connection with the audit of the Government accounts, and in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.”.

10. *Amendment of section 5.*—In section 5 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “forward contracts”, the words “forward contracts or option in goods or option in commodity derivative” shall be substituted;

(ii) for the words “Central Government”, the word “Commission” shall be substituted;

(b) in sub-section (2) for the words “forward contracts”, the words “forward contracts or option in goods or option in commodity derivative” shall be substituted;

(c) the following proviso shall be inserted at the end, namely:—

“Provided that the applications made to the Central Government, on or before the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008 and pending with the Central Government on such date, shall be transferred to the Commission and thereafter the Commission shall dispose of such applications in accordance with the provisions of this Act.”.

11. *Amendment of section 6.*—In section 6 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “Central Government”, the word “Commission” shall be substituted;

(ii) for the words “the goods or classes of goods with respect to which forward contracts may be entered”, the words “the goods or classes of goods or commodity derivative or classes of commodity derivatives with respect to which forward contracts or options may be entered” shall be substituted;

(b) in sub-section (2),—

(i) for the words “Central Government”, at both the places where they occur, the word “Commission” shall be substituted;

(ii) in clause (b) for the words “of not more than three persons”, the words “such number of persons as the Commission may, having regard to the interest of trade in commodities and commodities derivatives, specify,” shall be substituted;

(c) in sub-section (3), for the words “Central Government”, the word “Commission” shall be substituted;

(d) after sub-section (4), the following proviso shall be inserted, namely:—

“Provided that the recognition granted by the Central Government before the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, shall be deemed to have been granted by the Commission in accordance with the provisions of this Act.”.

12. *Substitution of new section for section 7.*—For section 7 of the principal Act, the following sections shall be substituted, namely:

“7. *Withdrawal of recognition.*—(1) If the Commission is of Opinion that any recognition granted to an association under the provisions’ of this Act should, in interest of the trade or in the public interest, be withdrawn, the Commission may, after giving a reasonable opportunity to the association to be heard in the matter, withdraw, by notification, the recognition granted to the said association:

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Commission may make such provision as it deems fit in the notification of withdrawal or in

any subsequent notification similarly published for the due performance of any contract outstanding on that date.

(2) Where the recognised association has not been corporatised or demutualised or it fails to submit the scheme referred to in sub-section (1) of section 7B within the specified time therefor or the scheme has been rejected by the Commission under sub-section (5) of section 7B, the recognition granted to such association under section 6, shall, notwithstanding anything contained contrary to any other provision of this Act, stand withdrawn and the Commission shall publish, by notification, such withdrawal of recognition:

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Commission may, after consultation with the association, make such provisions as it deems fit, in the order rejecting the scheme published in the Official Gazette under sub-section (5) of section 7B.

7A. Corporation and demutualisation of associations.—On and from the appointed date, all recognized associations (if not corporatised and demutualised before the appointed date) shall be corporatised and demutualised in accordance with the provisions contained in section 7B:

Provided that different appointed dates may be appointed for different recognized associations:

Provided further that the Commission may, if it is satisfied that any recognized association was prevented by sufficient cause from being corporatised and demutualised on or after the appointed date, extend the appointed date specified in respect of that recognized association and such recognized association may continue as such before such appointed date.

Explanation.—For the purposes of this section, “appointed date” means the date which the Commission may, by notification, appoint.

7B. Procedure for corporation and demutualisation.—(1) All recognized associations referred to in section 7A shall, within such time as may be specified by the Commission, submit a scheme for corporatisation and demutualisation for its approval:

Provided that the Commission may, by notification, specify name of the recognised association, which had already been corporatised and demutualised,

and such association shall not be required to submit the scheme under this section.

(2) On receipt of the scheme referred to in sub-section (1), the Commission may, after making such inquiry as may be necessary in this behalf and obtaining such further information, if any, as it may require and if it is satisfied that it would be in the interest of the trade in goods or commodity derivatives and also in the public interest, approve the scheme with or without modification.

(3) No scheme under sub-section (2) shall be approved by the Commission if the issue of shares for a lawful consideration or provision of trading rights in lieu of membership card of the members of a recognised association or payment of dividends to members have been proposed out of any reserves or assets of that association.

(4) Where the scheme is approved under sub-section (2), the scheme so approved shall be published immediately by—

(a) the Commission in the Official Gazette;

(b) the recognised association in such two daily newspapers circulating in India, as may be specified by the Commission, and upon such publication, notwithstanding anything contained contrary to any other provision of this Act or in any other law for the time being in force or any agreement, award, judgment, decree or other instrument for the time being in force, the scheme shall have effect and be binding on all persons and authorities including all members, creditors, depositors and employees of the recognised association and on all persons having any contract, right, power, obligation or liability with, against, over, to, or in connection with, the recognised association or its members.

(5) Where the Commission is satisfied that it would not be in the interest of the trade in goods or commodity derivatives and also in the public interest to approve the scheme under sub-section (2), it may, by an order, reject the scheme and such order of rejection shall be published by it in the Official Gazette:

Provided that the Commission shall give a reasonable opportunity of being heard to all the persons concerned and the recognised association concerned before passing an order rejecting the scheme.

(6) The Commission may, while approving the scheme under sub-section (2), by an order in writing, restrict—

(a) the voting rights of the shareholders who are also members of the recognised association;

(b) the right of shareholders or a member of the recognised association to appoint the representatives on the governing board of the association;

(c) the maximum number of representatives of the members of the recognized association to be appointed on the governing board of the association, which shall not exceed one-fourth of the total strength of the governing board.

(7) The order made under sub-section (6) shall be published in the Official Gazette and on the publication thereof, the order shall, notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956) or in any other law for the time being in force, have full effect.

(8) Every recognised association, in respect of which the scheme for corporatisation or demutualisation has been approved under sub-section (2) shall, either by fresh issue of equity shares to the public or in any other manner as may be specified by the regulations made by the Commission, ensure that at least fifty-one per cent. of its equity share capital is held, within twelve months from the date of publication of the order under sub-section (7), by the public other than shareholders having trading rights:

Provided that the Commission may, on sufficient cause being shown to it and in the public interest, extend the said period by another twelve months.’ .

13. *Amendment of section 8.*—In section 8 of the principal Act,—

(a) in sub-sections (1) and (2) for the words “Central Government” wherever they occur, the words “Central Government or Commission” shall respectively be substituted; .

(b) in sub-section (2), in clause (c), for the words “direct the Commission”, the words “direct any agency or any of its officers” shall be substituted;

(c) in sub-section (3) for the word “inquiry” wherever it occurs, the words “inquiry or inspection” shall be substituted.

14. *Amendment of section 9A.*—In section 9A of the Principal Act, in sub-section (2),—

(a) for the words “Central Government” wherever they occur, the words “Central Government or Commission” shall be substituted;

(b) for the words “that Government”, the words “that Government or Commission” shall be substituted.

15. *Substitution of new sections for section 10.*—For section 10 of the principal Act, the following sections shall be substituted, namely:—

“10. *Power of Commission to direct rules to be made or to make rules.*—(1) Whenever the Commission considers it expedient so to do, it may, by order in writing, direct any recognised association to make any rules or to amend any rules made by the recognised association within such period as it may specify in this behalf.

(2) If any recognized association, against whom an order is issued by the Commission under sub-section (1), fails or neglects to comply with such order within the specified period, the Commission may make the rules or amend the rules made by the recognized association, as the case may be, either in the form specified in the order or with such modification thereof as the Commission may think fit.

(3) Where, in pursuance of sub-section (2), any rules have been made or amended, the rules so made or amended shall be published in the Gazette of India, and shall, thereupon, have effect notwithstanding anything to the contrary contained in the Companies Act, 1956 or any other law for the time being in force, as if they had been made or amended by the recognized association concerned.

10A. *Clearing Corporation.*—(1) Recognized association may, with the prior approval of the Commission, transfer the duties and functions of a clearing house to a clearing corporation, being a company incorporated under the Companies Act, 1956 (1 of 1956), for the purposes of—

- (a) the periodical settlement of contracts and differences thereunder;
- (b) the delivery of, and payment for, goods;
- (c) any other matter incidental to, or connected with, such transfer.

(2) Every clearing corporation shall, for the purpose of transfer of the duties and functions of a clearing house to a clearing corporation referred to in sub-section (1), make bye-laws and submit the same to the Commission for its approval.

(3) The Commission may, on being satisfied that it is in the interest of the trade and also in the public interest to transfer the duties and functions of a clearing house to a clearing corporation, grant approval to the bye-laws submitted to it under sub-section (2) and approve transfer of the duties and functions of clearing house to a clearing corporation referred to in sub-section (1).

(4) The provisions of sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 12A, 12B and 13 shall, as far as may be, apply to a clearing corporation referred to in sub-section (1) as they apply in relation to a recognised association.”.

16. *Amendment of section 11.*—In section, 11 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “Central Government”, the word “Commission” shall be substituted;

(ii) for the words “forward contracts”, the words “forward contracts or option in goods or option in commodity derivative” shall be substituted;

(b) in sub-section (2), after the word “goods” wherever it occurs, the words “or forward contracts or option in goods or option in commodity derivative” shall be inserted;

(c) in sub-section (3), in clause (aa), for the brackets, figure and letter “(3A)”, the brackets and figure “(4)” shall be substituted;

(d) in sub-section (4) and the proviso, for the words “Central Government” at both the places where they occur, the word “Commission” shall be substituted.

17. *Substitution of new sections for sections 12 and 12A.*—For sections 12 and 12A of the principal Act, the following sections shall be substituted namely:—

“12. *Power of Commission to make or amend bye-laws of recognised association.*—(1) The Commission may, either on a request in writing received by it in this behalf from the governing body of a recognised association, or if in its opinion it is expedient so to do, make bye-laws for all or any of the matters specified in section II or amend any bye-laws made by such association under that section.

(2) Where, in pursuance of this section, any bye-laws have been made or amended, the bye-laws so made or amended shall be published in the Gazette of India and shall thereupon have effect as if they had been made or amended by the recognised association.

(3) Notwithstanding anything contained in this section, where the governing body of a recognized association objects to any bye-laws made or amended under this section by the Commission on its own motion, it may, within six months of the publication thereof under sub-section (2), apply to the Commission for a revision thereof, and the Commission may, after giving a reasonable opportunity to the governing body of the association to be heard in the matter, revise the bye-laws so made or amended, and where any bye-laws ~~so~~ made or amended are revised as a result of any action taken under this sub-section, the bye-laws so revised shall be published and shall become effective as provided in sub-section (2).

(4) The making or amendment or revision of any bye-laws under this section shall in all cases be subject to such conditions in regard to the previous publications as may be prescribed:

Provided that the Commission may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication.

12A. *Application of amendment of bye-laws to existing forward contracts or option in goods or option in commodity derivative.*—Any amendment of a bye-law made under section 11 other than an amendment made in pursuance of clause (a) or clause (aa) of sub-section (3) of that section or under section 12 shall also apply to all forward contracts or option in goods or option in commodity derivative entered into before the date of its approval by the Commission or before the date of its publication in the Gazette of India, as the case may be, and remaining to be performed on or after the said date.”.

18. *Amendment of section 12B.*—In section 12B of the principal Act,—

(a) in sub-section (1),—

(i) for the words “forward contract”, the words “forward contract or option in goods or option in commodity derivative” shall be substituted;

(ii) the words “of any goods or class of goods” shall be omitted;

(iii) after the words “any such contract”, the words “or option in goods or option in commodity derivatives” shall be inserted;

(b) in sub-section (3), for the words “forward contract” at both the places where they occur, the words “forward contract or option in goods or option in commodity derivative” shall be substituted.

19. *Substitution of new section for section 133.*—For section 13 of the principal Act, the following section shall be substituted, namely:—

“13. *Power of Commission to supersede governing body of recognised association.*—(1) Without prejudice to any other powers vested in the Commission under this Act, where the Commission is of the opinion that the governing body of any recognised association should be superseded, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the Commission may, after giving a reasonable opportunity to the governing body of the recognized association concerned to show cause why it should not be superseded, by notification, declare the governing body of such association to be superseded for such period not exceeding six months as may be specified in the notification, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body, and where more persons than one are appointed, may appoint one of such persons to be the chairman and another of such person to be the vice-chairman. .

(2) On the publication of a notification under sub-section (1), the following consequences shall ensue, namely:—

(a) the members of the governing body which has been superseded shall, as from the date of the notification of supersession, cease to hold office as such members;

(b) the person or persons appointed under sub-section (1) may exercise and perform all the powers and duties of the governing body which has been superseded;

(c) all such property of the recognised association as the person or persons appointed under sub-section (1) may, by order in writing, specify in this behalf as being necessary for the purpose of enabling him or them to carry out the purposes of this Act, shall vest in such person or persons.

(3) Notwithstanding anything to the contrary contained in any law or the rules or bye-laws of the association whose governing **body** is superseded under sub-section (1), the person or persons appointed under that sub-section shall

hold office for such period as may be specified in the notification published under that sub-section, and the Commission may, from time to time, by like notification, vary such period.

(4) On the determination of the period of office of any person or persons appointed under this section, the recognised association shall forthwith reconstitute a governing body in accordance with its rules:

Provided that until a governing body is so reconstituted, the person or persons appointed under sub-section (1), shall, notwithstanding anything contained in sub-section (1), continue to exercise and perform their powers and duties.

(5) On the reconstitution of a governing **body** under sub-section (4), all the property of the recognised association which had vested in, or was in the possession of, the person or persons appointed under sub-section (1), shall vest or re-vest, as the case may be, in the governing body so reconstituted.”.

20. *Amendment of section 14.*—In section 14 of the principal Act, for the words “Central Government” at both the places where they occur, the word “Commission” shall be substituted.

21. *Substitution of new Chapter for Chapter IIIA.*—For Chapter IIIA of the principal Act, the following Chapter shall be substituted, namely:—

“CHAPTER IIIA

REGISTRATION OF MEMBERS AND INTERMEDIARIES

14A. *Registration of members and intermediaries.*—(1) On and from the commencement of the Forward Contracts (Regulation) and Amendment Ordinance, 2008, no person intending to act as a member or intermediary shall deal in forward contract or option in goods or option in commodity derivative except under and in accordance with the conditions of a certificate of registration granted by the Commission in accordance with the regulations made under this Ordinance.

(2) A person, who in his capacity as a member or intermediary intends to deal in forward contract or option in goods or option in commodity derivative shall make an application for a certificate of registration to the Commission in such form along with such fee and containing such particulars as may be provided by regulations:

Provided that a person who was acting as a member or intermediary, before the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, may continue to do so for a period of six months from the date of such commencement if he has made an application for registration within the said period of six months, till the disposal of such application, whichever is later:

Provided further that the Commission may, by regulations, specify different fees for a class or classes of members or intermediaries on the basis of turn over of the business of such members or intermediaries.

(3) No foreign participant or foreign intermediary associated with the commodity derivatives market, as the Commission may, by notification in this behalf, specify, shall deal in forward contract or option in goods or option in commodity derivative except under and in accordance with the conditions of a certificate of registration obtained from the Commission in accordance with the regulations made under this Ordinance:

Provided that a foreign participant or foreign intermediary dealing in forward contract or option in goods or option in commodity derivative immediately before the commencement of this Ordinance, for which no certificate of registration was required prior to such commencement, may continue to deal in forward contract or option in goods until such time as rules may be made by the Central Government for such dealings or in case no such rules have been made until permitted as such by the Commission by notification.

(4) On receipt of an application under sub-section (2), the Commission may, after making such inquiry as it considers necessary in this behalf, by order in writing, grant a certificate of registration on such terms and conditions as may be specified by regulations or refuse to grant such certificate:

Provided that, before refusing to grant such certificate, the person making the application shall be given an opportunity of being heard in the matter.

14B. *Suspension or cancellation of certificate of registration.*—The Commission may, by order, suspend or cancel the certificate of registration in such manner as may be provided by regulations:

Provided that no order under this section shall be made unless the person concerned has been given an opportunity being heard in the matter.”.

22. *Substitution of new sections for sections 15, 16 and 17.*—For sections 15, 16 and 17 of the principal Act, the following sections shall be substituted namely:—

“15. *Forward contracts illegal or void in certain circumstances.*—

(1) Subject to the Provisions contained in sections 17 and 18, every forward contract, entered into otherwise than between members of a recognized association or through or with any such member, shall be illegal.

(2) Any forward contract entered into in pursuance of sub-section (1) which is in contravention of any of the bye-laws specified in this behalf under clause (a) of sub-section (3) of section 11 shall be void—

(a) as respects the rights of any member of the recognised association who has entered into contract in contravention of any such by-law and also,

(b) as respects the rights of any other person who has knowingly participated in the transaction entailing such contravention.

(3) Nothing in sub-section (2) shall affect the right of any person other than a member of the recognised association to enforce any such contract or to recover any sum under or in respect of such contract:

Provided that such person had no knowledge that such transaction was in contravention of any of the bye-laws specified under clause (a) of sub-section (3) of section 11.

(4) Any forward contract entered into in pursuance of sub-section (1) which at the date of the contract is in contravention of any of the bye-laws specified in this behalf under clause (aa) of sub-section (3) of section 11 shall be illegal.

(5) No member of a recognised association shall enter into any contract on his own account with any person other than a member of the recognised association, unless he has secured the consent or authority of such person and discloses in the note, memorandum or agreement of sale or purchase that he has bought or sold the forward contract, as the case may be, on his own account:

Provided that where the member has secured the consent or authority of such person otherwise than in writing he shall secure a written confirmation by such person of such consent or authority within three days from the date of such contract:

Provided further that in respect of any outstanding contract entered into by a member with a person other than a member of the recognised association, no consent or authority of such person shall be necessary for closing out in

accordance with the bye-laws, the outstanding contract, if the member discloses in the note, memorandum or agreement of sale or purchase in respect of such closing out that he has bought or sold the goods, forward contract or option in goods or option in commodity derivative, as the case may be, on his own account.

16. *Consequences of contravention of section 15.*—Notwithstanding anything contained in any other law for the time being in force or in any custom, usage or practice of the trade or the terms of any contract or the bye-laws of any association concerned relating to any contract,—

(a) every forward contract entered into on or before the date of commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, and remaining to be performed after the said date and which is not in conformity with the provisions of section 15, shall be deemed to be closed out at such rate as the Commission may fix in this behalf and different rates may be fixed for different classes of such contracts;

(b) all differences arising out of any contract so deemed to be closed out shall be payable on the basis of the rate fixed under clause (a) and the seller shall not be bound to give and the buyer shall not be bound to take delivery of the goods.

17. *Power to prohibit forward contract or options in goods or option in commodity derivative.*— (1) The Central Government may, by notification, declare that no person shall, save with the permission of the Central Government, deal in any forward contract or option in goods or option in commodity derivative specified in the notification, except to the extent and in the manner, if any, as may be specified in the notification.

(2) All forward contracts or options in goods or options in commodity derivative in contravention of the provisions of sub-section (1) entered into after the date of publication of the notification there under shall be illegal.

(3) Where a notification has been issued under sub-section (1), the provisions of section 16 shall, in the absence of anything to the contrary in the notification, apply to all forward contracts and options in goods for the sale or purchase of any goods specified in the notification (entered into on or before the date of the notification) and remaining to be performed after the said date.”.

23. *Amendment of section 18.*—In section 18 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “non-transferable specific delivery contracts”, the words and brackets “specific delivery contracts (both transferable and non-transferable)” shall be substituted;

(ii) in the proviso, for the words “non-transferable specific delivery contract”, the words and brackets “specific delivery contracts (both transferable and non-transferable)” shall be substituted;

(b) sub-section (2) shall be omitted;

(c) in sub-section (3), for the words “non-transferable specific delivery contracts” at both the places where they occur, the words and brackets “specific delivery contracts (both transferable and non-transferable)” shall be substituted.

24. *Substitution of new section for section 19.*—For section 19 of the principal Act, the following section shall be substituted, namely:—

19 Option in goods or option in commodity derivative illegal in certain circumstances. (1) Any option in goods or option in commodity derivative which has been entered into on or after the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, otherwise than between members of a recognised association or through or with any such member shall be illegal.

(2) The provisions of sub-sections (2), (3), (4) and (5) of section 15 shall apply to options in goods or option in commodity derivative as they apply in relation to a forward contract.”.

25. *Amendment of section 20.*—In section 20 of the principal Act,—

(i) in clause (a), in sub-clause (iii), for the words “forward contract”, the words “forward contract or option in goods or option in commodity derivative” shall be substituted;

(ii) clause (b) shall be omitted;

(iii) in clause (c), for the words “forward contract”, the words “forward contract or option in goods or option in commodity derivative” shall be substituted;

(iv) after clause (d), the following clause shall be inserted, namely:—

G. 145/2008/DTP.

“(da) fails to make or accept delivery of goods covered by non-transferable specific delivery contracts or by transferable specific contracts where rights and obligations have not been transferred, as the case may be; or”;

(v) for clause (e), the following clause shall be substituted, namely:—

“(e) enters into any forward contract or option in goods or option in commodity derivative in contravention of any of the provisions contained in sub-section (1) or sub-section (4) or sub-section (5) of section 15 or section 17 or section 19,”;

(vi) after the words “shall, on conviction, be punishable-” occurring below clause (e),—

(A) in clause (i), for the words “one thousand rupees”, the words “twenty-five thousand rupees but which may extend to twenty-five lakh rupees” shall be substituted;

(B) in clause (ii),—

(I) for the words, brackets and letter “under clause (d)”, the words, brackets and letters “under clause (d) or under clause (da)” shall be substituted;

(II) for the words “one thousand rupees”, the words “twenty-five thousand rupees” shall be substituted.

26. *Amendment of section 21.*—In section 21 of the principal Act,—

(i) in clauses; (a) to (f) for the words “forward contracts” wherever they occur, the words “forward contract or option in goods or option in commodity derivative” shall be substituted;

(ii) in clause (g), for the words and figures “in respect of goods to which the provisions of section 15 have been made applicable”, the words “in respect of goods or option in goods or option in commodity derivative” shall be substituted;

(iii) for clause (h), the following clause shall be substituted, namely:—

“(h) manipulates or attempts to manipulate prices in respect of forward contracts or option in goods or option in commodity derivative;”;

(iv) after the words “shall, on conviction, be punishable—” occurring below clause (h), in clauses (i) and (ii), for the words “one thousand rupees”, the words “twenty-five thousand rupees but which may extend to twenty-five lakh rupees” shall be substituted.

27. *Substitution of new sections for section 21A.*—For section 21A of the principal Act, the following sections shall be substitute, namely:—

“21A. *Penalty for failure to furnish information return, etc.*—If any person, who is required under this Act or any rules or regulations made thereunder,—

(a) to furnish any document, return or report to the Commission, fails to furnish the same, he shall be liable to a penalty of twenty thousand rupees for each day during which such failure continues or five lakh rupees, whichever is less;

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file or furnish the same within the time specified therefor in the regulations, he shall be liable to pay a penalty not exceeding five thousand rupees for each day during which such failure continues or five lakh rupees, whichever is less;

(c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty of ten thousand rupees for each day during which such failure continues or five lakh rupees, whichever is less; .

(d) or who was in charge of, and was responsible to, an association for the conduct of the business of the association, obstructs any officer of the Commission or any other person authorised by it to conduct inspection or to discharge any other function assigned by the Commission, such person as well as the association shall be liable to pay a finance of rupees one lakh for every occasion of such obstruction.

21B. *Penalty for failure by any person to enter into an agreement with clients.*—If any person, who is registered as a member or an intermediary and is required under this Act or any rules or regulations made thereunder to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty of twenty thousand rupees for each such failure during which such failure continues or five lakh rupees, whichever is less.

21C. *Penalty for failure to redress clients grievances.*—If any person, who is registered as a member or an intermediary, after having been called upon by the Commission in writing to redress the grievances of clients, fails to redress such grievances within the time specified by the Commission, he shall be liable to a penalty not exceeding two thousand rupees for each day during which such failure continues or five lakh rupees, whichever is less.

21D. *Penalty for insider trading.*—If any insider who,—

(i) either on his own behalf or on behalf of any other person, deals in forward contract or option in goods or option in commodity derivative on any association on the basis of any unpublished price sensitive information; or

(ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any forward contract or option in goods or option in commodity derivative on the basis of unpublished price sensitive information,

shall be liable to a penalty of twenty-five lakh rupees or three times the amount of profits made out of insider trading, whichever is higher.

21E. *Penalty for fraudulent and unfair trade practices.*—If any person indulges in fraudulent and unfair trade practices relating to forward contract or option in goods or option in commodity derivative, he shall be liable to a penalty of twenty-five lakh rupees or three times the amount of profits made out of such practices, whichever is higher.

21F. *Penalty for default in case of an Intermediary.* ~~If any person, who is registered as an intermediary under this Act or any regulations made thereunder,~~

~~a fails to issue contract notes in the form and manner specified by the association of which such intermediary is a member, he shall be liable to a penalty not exceeding five times the amount for which the contract note was required to be issued by that intermediary~~

(b) fails to deliver any goods or fails to make payment of the amount due to the client or in the manner or within the period specified in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for each day during which such failure continues;

(c) charges an amount of brokerage which is in excess of the brokerage specified by the association, he shall be liable to a penalty of five thousand rupees or five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

21G. *Penalty for failure to comply with directions of Commission.*—Any person, who fails to comply with the directions issued by the Commission under section 4B, shall be liable to pay a penalty not exceeding two lakh rupees for each day during which such failure continues which may extend to five lakh rupees.

21H. *Consequences of failure to pay penalty.*—(1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention any of the provisions of this Act or of any rules or regulations made there under, he shall be punishable with imprisonment for a term which may extend to 'three years, or with fine, or with both.

(2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years or with fine or with both.

21-I. *Power to adjudicate.*—(1) For the purposes of adjudging under Sections 21 A to 21 G, the Commission shall appoint any of its officers not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the cases to give evidence or to produce any document which, in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

21J. *Factors to be taken into account by adjudicating officer.*—While adjudging the quantum of penalty under section 21-I, the adjudicating officer shall have due regard to the following factors, namely :—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default ;

(b) the amount of loss caused to a client or group of clients as a result of the default ;

(c) the repetitive nature of the default.

21K. *Crediting sums realised by way of penalties to Consolidated Fund of India.*—All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

21L. *Power of court to order forfeiture of property.*—Any court trying an offence punishable under this Act, may, if it thinks fit and in addition to any sentence which it may impose for such offence, direct that any money, goods or other property in respect of which the offence has been committed, shall be forfeited to the Central Government.

Explanation.—For the purposes of this section, property in respect of which an offence has been committed, shall include deposits in a bank where the said property is converted into such deposits.”

28. *Amendment of section 22A.*—In section 22A of the principal Act,—

(a) in sub-section (1),—

(i) after the words “forward contracts or options in goods”, the words “or option in commodity derivative” shall be inserted;

(ii) after the words “forward contract or option in goods”, the words “or option in commodity derivative” shall be inserted;

(b) for sub-section (2), the following sub-sections shall be substituted, namely :—

“(2) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to search or seizure made under sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

(3) The Commission may, notwithstanding anything contained in this Act, file cases in respect of offences committed under this Act, directly to the courts having jurisdiction in respect of such offences.”

29. *Amendment of section 22B.*—In section 22B of the principal Act, in sub-section (1), after the words “or option in goods”, the words “or option in commodity derivative” shall be inserted.

30. *Insertion of new section 22C.*—After section 22B of the principal Act, the following section shall be inserted, namely:—

“22C. *Investigation.*—(1) Where the Commission has reasonable grounds to believe that—

(a) the transactions in forward contracts or option in goods or option in commodity derivative are being dealt with in a manner detrimental to the commodity market or person associated with the commodity market ; or

(b) any intermediary or any person associated with the commodities market has violated any of the provisions of this Act or the rules or regulations made or directions issued by the Commission thereunder, it may, at any time by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or person associated with the commodities market and to report thereon to the Commission.

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956, it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 14A, every person associated with the commodities market to preserve and to produce to the Investigating Authority or any person authorised by him in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person associated with commodities market in any manner to furnish such information to, or, produce such books, or registers, or other documents, or record before him or any person authorised by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

(4) The Investigating Authority may keep in its custody any books, registers, other documents and record produced under sub-section (2) or sub-

section (3) for six months and thereafter shall return the same to any intermediary or any person associated with commodities market by whom or on whose behalf the books, registers, other documents and record are produced :

Provided that the Investigating Authority may call for any books, registers, other documents and record if they are needed again :

Provided further that if the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and record produced before the Investigating Authority, it shall give certified copies of such books, registers, other documents and record to such person or on whose behalf the books, registers, other documents and record were produced.

(5) Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with commodities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

(6) If any person fails without reasonable cause or refuses—

(a) to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty under sub-section (2) or sub-section (3) to produce; or

(b) to furnish any information which is his duty under sub-section (3) to furnish; or

(c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in sub-section (7),

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one lakh rupees, or with both, and also with a further fine which may extend to twenty thousand rupees for every day after the first during which the failure or refusal continues.

(7) Notes of any examination under sub-section (5) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(8) Where in the course of investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to, any intermediary or any person associated with commodities market in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the Judicial Magistrate of the first class having jurisdiction for an order for the seizure of such books, registers, other documents and record.

(9) After considering the application and hearing the Investigating Authority, if necessary, the Magistrate may, by order, authorise the Investigating Authority.—

(a) to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and record are kept;

(b) to search that place or those places in the manner specified in the order; and

(c) to seize books, registers, other documents and record, as it considers necessary for the purposes of the investigation.

(10) The Investigating Authority shall keep in its custody the books, registers, other documents and record seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate of such return:

Provided that the Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof.

(11) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (74 of 1952), relating to searches or seizures made under that Code.”.

31. *Amendment of section 23.*—In section 23 of the principal Act, after clause (d), the following clause shall be inserted, namely:—

“(e) an offence falling under section 21H.”.

32. *Insertion of new section 24A.*—In Chapter V of the principal Act, after section 24, the following section shall be inserted, namely:—

“24A *Civil court not to have jurisdiction.*—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or the Appellate Tribunal is empowered by or under, this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”.

33. *Insertion of new Chapter VA.*—After Chapter V of the principal Act, the following Chapter shall be inserted, namely:—

‘CHAPTER VA

JURISDICTION AND AUTHORITY OF APPELLATE TRIBUNAL

24B. *Appeal to Appellate Tribunal.*—(1) Save as provided in sub-section (2), any person aggrieved on or after the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, or by an order of the Commission made, or the rules or regulations made thereunder or by an order made by an adjudicating officer under this Act may prefer an appeal to the Appellate Tribunal having jurisdiction in the matter.

(2) The Central Government shall specify, by notification, the matters and places in relation to which the Appellate Tribunal may exercise jurisdiction.

(3) No appeal shall lie to the Appellate Tribunal from an order made by the Commission, or an adjudicating officer with the consent of the parties.

(4) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Chairman of the Commission is received by the aggrieved person and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within that period.

(5) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(6) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned authority whose order has been appealed against.

(7) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

24C. *Right to legal representation.*—The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

Explanation.—For the purposes of this section,—

(a) “chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(b) “company secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(c) “cost accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d) “legal practitioner” means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

24D. *Limitation.*—The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to an appeal made to the Appellate Tribunal.

24E. *Appeal to Supreme Court.*—Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court

within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order :

Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.”.

34. *Insertion of new sections 26A, 26B, 26C, 26D, 26E and 26F.*—After section 26 of the principal Act, the following sections shall be inserted, namely:—

“26A. *Powers of Central Government to issue directions.*—(1) Without prejudice to the foregoing provisions of this Act, the Commission shall, in exercise of its powers or performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time :

Provided that the Commission shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government, whether a question is one of policy or not, shall be final.

26B. *Power of Central Government to supersede Commission.*—(1) If at any time the Central Government is of the opinion—

(a) that on account of grave emergency, the Commission is unable to discharge the functions and perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Commission has persistently made wilful default in complying with any direction issued by the Central Government under this Act or in the discharge of the functions and perform the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Commission or the administration of the Commission has deteriorated ; or

(c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification, supersede the Commission for such period, not exceeding six months, as may be specified in the notification.

(2) Upon the publication of a notification under sub-section (1) superseding the Commission,—

(a) all the members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Commission shall, until the Commission is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and

(c) all property owned or controlled by the Commission shall, until the Commission is reconstituted, vest in the Central Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may reconstitute the Commission by fresh appointment and in such case any person or persons who vacated their offices under clause (a) of sub-section (2), shall not be deemed disqualified for such appointment:

Provided that the Central Government may, at any time before the expiration of the period of supersession, take action under this sub-section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

26C. *Returns and reports.*— (1) The Commission shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the commodities market, as the Central Government may, from time to time, require.

(2) Without prejudice to the provisions of sub-section (1), the Commission shall, within ninety days, after the end of each financial year, submit to the Central Government a report in such form, as may be prescribed, giving a true and full account of its activities, policy and programmes during the previous financial year.

(3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

26D. *Delegation.*—The Commission may, by general or special order in writing, delegate to any member or officer of the Commission or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 28) as it may deem necessary.

26E. *Bar of jurisdiction.*— No order passed by the Commission or the adjudicating officer under this Act shall be appealable except as provided in section 24B and no civil court shall have jurisdiction in respect of any matter which the Commission or the adjudicating officer is empowered by, or under, this Act to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the Commission or the adjudicating officer by, or under, this Act.

26F. *Members, officers and employees of Commission to be public servants.*—All members, officers and other employees of the Commission shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 (45 of 1860) of the Indian Penal Code.”.

35. *Insertion of new section 27B.*—After section 27A of the principal Act, the following section shall be inserted, namely:—

“27B. *Exemption from tax on wealth and income.*—Notwithstanding anything contained in the Wealth-tax Act, 1957 (27 of 1957) the Income-tax Act, 1961 (43 of 1961) or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Commission shall not be liable to pay wealth tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.”.

36. *Amendment of section 28.*—In section 28 of the principal Act, in sub-section (2),—

(i) clause (cc) shall be omitted;

(ii) for clause (g), the following clauses shall be substituted, namely:—

“(g) the duties and powers which may be performed or exercised by the Commission under clause (q) of section 4;

(h) the form and manner in which the annual statement of accounts shall be maintained under sub-section (1) of section 4F;

(i) the rules for dealing by foreign participant or foreign intermediary under the proviso to sub-section (3) of section 14A;

(j) the manner in which an inquiry shall be held under sub-section (1) of section 21-I;

(k) the form in which an appeal may be filed before the Appellate Tribunal under sub-section (4) of section 24B and the fees payable in respect of such appeal;

(l) the form and the manner in which returns and report to be made to the Central Government under section 26C;

(m) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.”.

37. *Insertion of new sections 28A and 28B.*—After section 28 of the principal Act, the following sections shall be inserted, namely:—

“28A. *Powers to make regulations.*—(1) The Commission may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the time and places of meetings of the Commission and the procedure to be followed at such meetings under section 3D including quorum necessary for the transaction of business;

(b) the terms and other conditions of service of officers and employees of the Commission under sub-section (2) of section 3H;

(c) the manner in which the fresh issue of equity shares shall be made to the public under sub-section (8) of section 7B;

(d) the conditions of certificate of registration to act as a member or intermediary to deal with forward contract or option in goods or option in commodity derivative under sub-section (1) of section 14A;

(e) the fee for a class or classes of member or intermediary under the second proviso to sub-section (2) of section 14A;

(f) the terms and conditions subject to which registration may be granted under sub-section (4) of section 14A;

(g) the manner in which the certificate of registration may be suspended or cancelled under section 14B;

(h) any other matter relating to trading, clearing, settlement and delivery of goods, forward contract, option in goods or option in commodity derivative.

(3) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

28B. *Application of other laws not barred.*—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.”.

CHAPTER III

AMENDMENT TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

38. *Amendment of section 15U of Act 15 of 1992.*—In section 15U of the Securities and Exchange Board of India Act, 1992, in sub-section (2), for the words “under this Act”, the words “under this Act or any other law for the time being in force” shall be substituted.

PRATIBHA DEVISING PATIL

President.